

THE HONORABLE JAMES L. ROBART

IN THE UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

FRANTZ SAMSON, a Washington resident,  
individually and on behalf of all others similarly  
situated,

NO. 2:19-cv-00175-JLR

**Plaintiff,**

vii

## UNITEDHEALTHCARE SERVICES, INC.,

**Defendant.**

**STIPULATED MOTION AND  
PROPOSED AMENDED PROTECTIVE  
ORDER<sup>1</sup>**

## **NOTE ON MOTION CALENDAR:**

November 6, 2019

## I. STIPULATION

## 1. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection may be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The parties acknowledge that this agreement is consistent with LCR 26(c). It does not confer blanket protection on all disclosures or responses to discovery, the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to

<sup>1</sup> This Stipulated Proposed Amended Protective Order is consistent with the Court’s Stipulation and Protective Order entered on June 25, 2019, Dkt. No. 45. The only change to this Stipulated Proposed Amended Protective Order, as compared to the Court’s prior Protective Order, is found in Paragraph 11, which the parties have agreed to amend in order to comply with their obligations under the Health Insurance Portability and Accountability Act (“HIPAA”), relating to the return or destruction of documents containing protected health information at the conclusion of the litigation.

1 confidential treatment under the applicable legal principles, and it does not presumptively  
2 entitle parties to file confidential information under seal.

3

4 2. **"CONFIDENTIAL" MATERIAL**

5 "Confidential" material shall include the following documents and tangible things  
6 produced or otherwise exchanged: (1) personal and private information regarding Plaintiff and  
7 proposed class members, including current and former street addresses for natural persons,  
8 social security numbers, telephone numbers, email addresses, dates of birth, driver's license  
9 numbers, account numbers, maiden names, and passwords; (2) confidential business and  
10 financial information; (3) trade secrets or other confidential research, development, or  
11 commercial information; and (4) patient health information ("PHI") that is protected under the  
12 Health Insurance Portability and Accountability Act ("HIPAA"), 45 C.F.R. Parts 160 and 164  
13 (Privacy Rules), or other applicable statute. With respect to any PHI, the producing party may  
14 redact any information concerning physical or mental health condition and/or health care, but  
15 shall not redact name and contact information (e.g., phone number, e-mail, physical address).  
16 To the extent the producing party can produce requested information without also producing  
17 the irrelevant information concerning physical or mental health condition and/or health care,  
18 the producing party will produce the requested information and refrain from producing the  
19 irrelevant information. For example, if names and contact information is maintained in a  
20 structured database that also houses information regarding physical or mental health, the  
21 database should be queried so that the requested names and contacted information are produced  
22 and the information regarding physical or mental health is not produced.

23 It is the parties' intent that information will not be designated confidential without a  
24 good faith belief that it has been maintained in a confidential, non-public manner, and there is  
25 good cause why it should not be part of the public record in this case.

26

27

1   3.    SCOPE

2           The protections conferred by this agreement cover not only confidential material (as  
3 defined above), but also (1) any information copied or extracted from confidential material; (2)  
4 all copies, excerpts, summaries, or compilations of confidential material; and (3) any testimony,  
5 conversations, or presentations by parties or their counsel that might reveal confidential  
6 material.

7           However, the protections conferred by this agreement do not cover (1) information that  
8 is in the public domain or becomes part of the public domain through trial or otherwise; (2) any  
9 information known to the receiving party prior to the disclosure or obtained by the receiving  
10 party after the disclosure from a source who obtained the information lawfully and under no  
11 obligation of confidentiality to the designating party; and (3) information regarding or relating  
12 to the receiving party.

13          Finally, any use of confidential material at trial shall be governed by a separate  
14 agreement or order.

15   4.    ACCESS TO AND USE OF CONFIDENTIAL MATERIAL

16   4.1   Basic Principles. A receiving party may use confidential material that is  
17 disclosed or produced by another party or by a non-party in connection with this case only for  
18 prosecuting, defending, or attempting to settle this litigation. Confidential material may be  
19 disclosed only to the categories of persons and under the conditions described in this  
20 agreement. Confidential material must be stored and maintained by a receiving party at a  
21 location and in a secure manner that ensures that access is limited to the persons authorized  
22 under this agreement. It is expressly intended and agreed that Confidential material will not be  
23 made public via social media, Internet publication, or otherwise.

24   4.2   Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise  
25 ordered by the court or permitted in writing by the designating party, a receiving party may  
26 disclose any confidential material only to:

27                 (a)   the parties;

1                         (b) the receiving party's counsel of record in this action, as well as  
2 employees of counsel to whom it is reasonably necessary to disclose the information for this  
3 litigation;

4                         (c) the officers, directors, and employees (including in-house counsel) of the  
5 receiving party to whom disclosure is reasonably necessary for this litigation;

6                         (d) experts and consultants to whom disclosure is reasonably necessary for  
7 this litigation and who have signed the "Acknowledgment and Agreement to Be Bound"  
8 (Exhibit A);

9                         (e) the court, court personnel, and court reporters and their staff, including  
10 any court reporter or videographer reporting a deposition;

11                         (f) copy or imaging services retained by counsel to assist in the duplication  
12 of confidential material, provided that counsel for the party retaining the copy or imaging  
13 service instructs the service not to disclose any confidential material to third parties and to  
14 immediately return all originals and copies of any confidential material;

15                         (g) witnesses or potential witnesses in the action to whom disclosure is  
16 reasonably necessary and who have signed the "Acknowledgment and Agreement to Be  
17 Bound" (Exhibit A), unless otherwise agreed by the designating party or ordered by the court.  
18 Pages of transcribed deposition testimony or exhibits to depositions that reveal confidential  
19 material must be separately bound by the court reporter and may not be disclosed to anyone  
20 except as permitted under this agreement;

21                         (h) mediators or settlement officers, and their supporting personnel, hired or  
22 appointed to address any issue(s) in the litigation;

23                         (i) the author or recipient of a document containing the information or a  
24 custodian or other person who otherwise possessed or knew the information;

25                         (j) professional jury or trial consultants, mock jurors, and professional  
26 vendors to whom disclosure is reasonably necessary for this litigation and who have signed the  
27 "Acknowledgement and Agreement to Be Bound" (Exhibit A); and

(k) other persons by written agreement of the parties.

2       4.3     Filing Confidential Material. Before filing confidential material or discussing or  
3 referencing such material in court filings, the filing party shall confer with the designating  
4 party, in accordance with Local Civil Rule 5(g)(3)(A), to determine whether the designating  
5 party will remove the confidential designation, whether the document can be redacted, or  
6 whether a motion to seal or stipulation and proposed order is warranted. During the meet and  
7 confer process, the designating party must identify the basis for sealing the specific confidential  
8 information at issue, and the filing party shall include this basis in its motion to seal, along with  
9 any objection to sealing the information at issue. Local Civil Rule 5(g) sets forth the  
10 procedures that must be followed and the standards that will be applied when a party seeks  
11 permission from the court to file material under seal. A party who seeks to maintain the  
12 confidentiality of its information must satisfy the requirements of Local Civil Rule 5(g)(3)(B),  
13 even if it is not the party filing the motion to seal. Failure to satisfy this requirement will result  
14 in the motion to seal being denied, in accordance with the strong presumption of public access  
15 to the Court's files.

**16 | P a g e**    **5. DESIGNATING PROTECTED MATERIAL**

17        5.1     Exercise of Restraint and Care in Designating Material for Protection. Before  
18 any information is designated “CONFIDENTIAL,” counsel of record for the designating party  
19 must first review the information and make a determination, in good faith, that it is confidential  
20 or otherwise entitled to protection under Fed. R. Civ. P. 26(c). Each party or non-party that  
21 designates information or items for protection under this agreement must take care to limit any  
22 such designation to specific material that qualifies under the appropriate standards. The  
23 designating party must designate for protection only those parts of material, documents, items,  
24 or oral or written communications that qualify, so that other portions of the material,  
25 documents, items, or communications for which protection is not warranted are not swept  
26 unjustifiably within the ambit of this agreement.

1        Mass, indiscriminate, or routinized designations are prohibited. For example, if a  
 2 database or information structure falls within the scope of this Agreement, the  
 3 CONFIDENTIAL designation applies only to the proprietary structure and/or schema of the  
 4 database or informational structure. A party who would like to designate the underlying data as  
 5 CONFIDENTIAL must do so independently from the proprietary structure and/or schema.  
 6 Designations that are shown to be clearly unjustified or that have been made for an improper  
 7 purpose (e.g., to unnecessarily encumber or delay the case development process or to impose  
 8 unnecessary expenses and burdens on other parties) expose the designating party to sanctions.

9        If it comes to a designating party's attention that information or items that it designated  
 10 for protection do not qualify for protection, the designating party must promptly notify all other  
 11 parties that it is withdrawing the mistaken designation.

12        5.2      Manner and Timing of Designations. Except as otherwise provided in this  
 13 agreement (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or  
 14 ordered, disclosure or discovery material that qualifies for protection under this agreement must  
 15 be clearly so designated before or when the material is disclosed or produced.

16                (a)     Information in documentary form: (e.g., paper or electronic documents  
 17 and deposition exhibits, but excluding transcripts of depositions or other pretrial or trial  
 18 proceedings), the designating party must affix the word "CONFIDENTIAL" to each page that  
 19 contains confidential material. If only a portion or portions of the material on a page qualifies  
 20 for protection, the producing party also must clearly identify the protected portion(s) (e.g., by  
 21 making appropriate markings in the margins).

22                (b)     Testimony given in deposition or in other pretrial proceedings: the  
 23 parties and any participating non-parties must identify on the record, during the deposition or  
 24 other pretrial proceeding, all protected testimony, without prejudice to their right to so  
 25 designate other testimony after reviewing the transcript. Any party or non-party may, within  
 26 fifteen days after receiving the transcript of the deposition or other pretrial proceeding,  
 27 designate portions of the transcript, or exhibits thereto, as confidential. Entire deposition

1 transcripts should rarely, if ever, be designated as confidential. Any party who fails to  
2 designate a deposition transcript, designate portions of the transcript, or exhibits thereto, as  
3 confidential within thirty days after receipt has waived its ability to do so unless good cause  
4 exists for the failure to make the designation within that time period.

5 If a party or non-party desires to protect confidential information at trial, the issue  
6 should be addressed during the pre-trial conference.

7 (c) Other tangible items: the producing party must affix in a prominent  
8 place on the exterior of the container or containers in which the information or item is stored  
9 the word "CONFIDENTIAL." If only a portion or portions of the information or item warrant  
10 protection, the producing party, to the extent practicable, shall identify the protected portion(s).

11 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to  
12 designate qualified information or items does not, standing alone, waive the designating party's  
13 right to secure protection under this agreement for such material. Upon timely correction of a  
14 designation, the receiving party must make reasonable efforts to ensure that the material is  
15 treated in accordance with the provisions of this agreement.

16 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

17 6.1 Timing of Challenges. Any party or non-party may challenge a designation of  
18 confidentiality at any time. Unless a prompt challenge to a designating party's confidentiality  
19 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic  
20 burdens, or a significant disruption or delay of the litigation, a party does not waive its right to  
21 challenge a confidentiality designation by electing not to mount a challenge promptly after the  
22 original designation is disclosed.

23 6.2 Meet and Confer. The parties must make every attempt to resolve any dispute  
24 regarding confidential designations without court involvement. Any motion regarding  
25 confidential designations or for a protective order must include a certification, in the motion or  
26 in a declaration or affidavit, that the movant has engaged in a good faith meet and confer  
27 conference with other affected parties in an effort to resolve the dispute without court action.

1 The certification must list the date, manner, and participants to the conference. A good faith  
2 effort to confer requires a face-to-face meeting or a telephone conference.

3       6.3     Judicial Intervention. If the parties cannot resolve a challenge without court  
4 intervention, the designating party may file and serve a motion to retain confidentiality under  
5 Local Civil Rule 7 (and in compliance with Local Civil Rule 5(g), if applicable). The burden  
6 of persuasion in any such motion shall be on the designating party. Frivolous challenges, and  
7 those made for an improper purpose (e.g., to harass or impose unnecessary expenses and  
8 burdens on other parties) may expose the challenging party to sanctions. All parties shall  
9 continue to maintain the material in question as confidential until the court rules on the  
10 challenge.

11     7.     PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER  
12           LITIGATION

13       If a party is served with a subpoena or a court order issued in other litigation that  
14 compels disclosure of any information or items designated in this action as  
15 "CONFIDENTIAL," that party must:

16           (a)    promptly notify the designating party in writing and include a copy of  
the subpoena or court order;

17           (b)    promptly notify in writing the party who caused the subpoena or order to  
issue in the other litigation that some or all of the material covered by the subpoena or order is  
20 subject to this agreement. Such notification shall include a copy of this agreement; and

21           (c)    cooperate with respect to all reasonable procedures sought to be pursued  
by the designating party whose confidential material may be affected.

22     8.     A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN  
23           THIS LITIGATION

24       The terms of this Order are applicable to information produced by a non-party in this  
25 action and designated as "CONFIDENTIAL." Such information produced by a non-parties in  
26 connection with this litigation is protected by the remedies and relief provided by this Order.  
27

1 Nothing in these provisions should be construed as prohibiting a non-party from seeking  
2 additional protections.

3 In the event that a party is required, by a valid discovery request, to produce a non-  
4 party's confidential information in its possession, and the party is subject to an agreement with  
5 the non-party not to produce the non-party's confidential information, then the party shall:

6 (a) promptly notify in writing the requesting party and the non-party that some or  
7 all of the information requested is subject to a confidentiality agreement with a non-party;

8 (b) promptly provide the non-party with a copy of the Stipulated Protective Order in  
9 this litigation, the relevant discovery request(s), and a reasonably specific description of the  
10 information requested; and

11 (c) make the information requested available for inspection by the non-party.

12 If the non-party fails to object or seek a protective order from this court within fourteen  
13 days of receiving the notice and accompanying information, the receiving party may produce  
14 the non-party's confidential information responsive to the discovery request. If the non-party  
15 timely seeks a protective order, the receiving party shall not produce any information in its  
16 possession or control that is subject to the confidentiality agreement with the non-party before a  
17 determination by the court. Absent a court order to the contrary, the non-party shall bear the  
18 burden and expense of seeking protection in this court of its Protected Material.

19 9. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

20 If a receiving party learns that, by inadvertence or otherwise, it has disclosed  
21 confidential material to any person or in any circumstance not authorized under this agreement,  
22 the receiving party must immediately (a) notify in writing the designating party of the  
23 unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the  
24 protected material, (c) inform the person or persons to whom unauthorized disclosures were  
25 made of all the terms of this agreement, and (d) request that such person or persons execute the  
26 "Acknowledgment and Agreement to Be Bound" that is attached hereto as Exhibit A.

27

10. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED  
MATERIAL

When a producing party gives notice to receiving parties that certain inadvertently produced material is subject to a claim of privilege or other protection, the obligations of the receiving parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure may be established in an e-discovery order or agreement that provides for production without prior privilege review. The parties agree to the entry of a non-waiver order under Fed. R. Evid. 502(d) as set forth herein.

11. NON-TERMINATION AND RETURN OF DOCUMENTS

Within 60 days after the termination of this action, including all appeals, each receiving party must return all confidential material to the producing party, including all copies, extracts and summaries thereof. Alternatively, the parties may agree upon appropriate methods of destruction.

Notwithstanding this provision, counsel are entitled to retain one archival copy of all documents filed with the court, trial, deposition, and hearing transcripts, correspondence, deposition and trial exhibits, expert reports, attorney work product, and consultant and expert work product, even if such materials contain confidential material. However, to the extent any such documents contain protected health information, counsel may not retain a copy and instead must either return to the Defendant or destroy documents containing protected health information, consistent with 45 C.F.R. § 164.512(e)(1)(v)(B).

The confidentiality obligations imposed by this agreement shall remain in effect until a designating party agrees otherwise in writing or a court orders otherwise.

IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

RESPECTFULLY SUBMITTED AND DATED this 6<sup>TH</sup> day of November, 2019.

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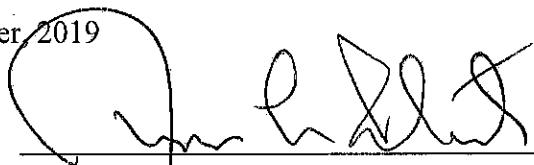
1                   **II. PROPOSED ORDER**

2                   PURSUANT TO STIPULATION, IT IS SO ORDERED

3                   IT IS FURTHER ORDERED that pursuant to Fed. R. Evid. 502(d), the production of  
4 any documents in this proceeding shall not, for the purposes of this proceeding or any other  
5 federal or state proceeding, constitute a waiver by the producing party of any privilege  
6 applicable to those documents, including the attorney-client privilege, attorney work-product  
7 protection, or any other privilege or protection recognized by law.

8                   IT IS SO ORDERED.

9  
10                  DATED this 7 day of November 2019



11  
12                  HON. JAMES L. ROBART

13                  UNITED STATES DISTRICT COURT JUDGE

## EXHIBIT A

## ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, \_\_\_\_\_ [print or type full name], of

[print or type full address],

5 declare under penalty of perjury that I have read in its entirety and understand the Stipulated  
6 Protective Order that was issued by the United States District Court for the Western District of  
7 Washington on [date] in the case of *Frantz Samson v. UnitedHealthCare Services, Inc.*, Case  
8 No. 2:19-CV-00175-JLR. I agree to comply with and to be bound by all the terms of this  
9 Stipulated Protective Order and I understand and acknowledge that failure to so comply could  
10 expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I  
11 will not disclose in any manner any information or item that is subject to this Stipulated  
12 Protective Order to any person or entity except in strict compliance with the provisions of this  
13 Order.

14 I further agree to submit to the jurisdiction of the United States District Court for the  
15 Western District of Washington for the purpose of enforcing the terms of this Stipulated  
16 Protective Order, even if such enforcement proceedings occur after termination of this action.

18 Date: \_\_\_\_\_

20 City and State where sworn and signed:

22 Printed name:

24 || Signature: